

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Commercial Spectrum	)	WT- Docket No. 05-211
Enhancement Act and Modernization of the	)	
Commission's Competitive Bidding Rules and	)	
Procedures.	)	

**COMMENTS OF POPLAR ASSOCIATES, LLC**

Poplar Associates, LLC ("Poplar"), by counsel, submits these comments in response to the Commission's Further Notice of Proposed Rule Making in WT Docket No. 05-211 ("Further Notice").<sup>1</sup> There, the Commission sought specific comment on elements of a proposal raised by Council Tree Communications, Inc. ("Council Tree"). *Further Notice*, at para 1. It also explained that it was "consider[ing] whether we should modify our general competitive bidding rules ("Part 1" rules) governing benefits reserved for designated entities ("DEs") (i.e. small businesses; rural telephone companies and businesses owned by women and minorities." *Id.*

**I. STATEMENT OF INTEREST**

Poplar, through affiliates, is a *bona fide* DE. It holds eleven (11) DE licenses. All of these are in small, rural markets. As such, Poplar is experienced with the Commission's DE program, and with the competitive pressure facing DEs in both acquiring and operating wireless licenses.

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<sup>1</sup> Implementation of the Commercial Spectrum Enhancement Act, \_\_ FCC Rcd \_\_\_, FCC 06-8, 71 Fed. Reg. 6992 (Feb 10, 2006)

## II. DISCUSSION

### A. The Commission Should Adopt Closed Bidding In Order to Maintain a Vibrant Designated Entity Program

Poplar is most supportive of the Commission's proposal to continue in its efforts to improve its DE program. Efforts to preserve DE benefits for carriers other than the largest few entities, whether they are active in wireless or not, certainly appears to be a step in the right direction. That being said, Poplar will leave it to others to articulate the particular parameters that should control eligibility restrictions by large entities.

The Council Tree proposal, while fine, fails to address one glaring issue: the need for closed bidding to assure DE involvement in small markets. The nature of the wireless industry effectively causes the DE opportunity to obtain – and maintain – licenses to be limited to rural areas. In larger markets, the cost to obtain spectrum, and then to develop it, effectively precludes DE involvement except where larger carriers have no genuine interest in the spectrum.

In view of the above, if the Commission wants to maintain a truly vibrant DE program, and one that is not largely dependent on DEs consisting solely of small entity/large carrier relationships, it should re-look at closed bidding. Poplar submits that spectrum allocations in each auction set so that (a) MSA licenses are open to all qualified bidders and (b) RSA licenses are closed to all but DEs, would improve the DE program. It will serve the public interest in several different ways. First, it will provide DEs with sufficient amounts of spectrum with which to provide vibrant services. Second, it will provide spectrum that is small enough (MHz/pops)

for DEs to acquire and operate.<sup>2</sup> Third, it will provide rural markets with operators that are dedicated to those markets and that view those markets as their first priority. Finally, it will facilitate compliance with the Congressional mandate that the DE program provide meaningful opportunities to DEs.

**B. Comments on Specific Commission Proposals**

Poplar does not take issue with the core component of the Council Tree proposal, i.e. that material involvement by the largest national carriers should be limited, and submits that the adoption of this proposal could well strengthen the DE program. Yet, the proposed five million dollar revenue cap appears to be lower than appropriate. More importantly, whatever cap is applied should be locked in as of a fixed date. Alternatively, it should be accompanied by an automatic index adjustment to address growth over time. Without such provisions, a safeguard that may be valid today could well turn into an unnecessary and unintended restriction over time.

With respect to what constitutes a “material relationship” between a small business and a large investor, Poplar submits that, if the concept is to be used at all, the most sensible approach is to very broadly define “material relationship,” but provide that it is relevant only to entities over a given revenue cap, as discussed above.

With respect to the question of eligibility of non-carriers, Poplar submits that it would be both impractical and inequitable to single out existing wireless carriers for eligibility restrictions. After all, many of those carriers are in part responsible for the current vibrant and competitive

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<sup>2</sup> Small operators in small markets could operate in concert with larger carriers in the larger markets, thus maintaining an opportunity for truly nationwide service. Individual carriers could utilize whatever technologies and platforms they desire so long as such technologies were available to all carriers.

state of the wireless industry. Thus, if a revenue cap is to apply to investors of DEs, it should apply across the board to both new and existing wireless carriers.

With respect to the proposal for a net worth cap on individuals, that too seems both unnecessary and impractical. It is impractical because it is very difficult to measure and it would seem to eliminate many entrepreneurs who have been successful in wireless to date – and are the ones who can make a DE program work. It is unnecessary because, regardless of whether one's net worth is one million dollars or one hundred million dollars, he is “small” by virtue of the investment needed for wireless today. Instead of a personal net worth cap, the Commission should provide a cap on the percent of RSA population (not market) that any DE can obtain, which cap should be ten (10) percent of all RSA populations.

Poplar strongly supports the Council Tree proposal that a third bidding credit level be added. Poplar submits that it should be at least 40%, and should be applicable to all applicants having less than one million dollars in attributable average annual revenues. In this regard, with the absence of any closed bidding, this greater credit is needed to permit designated entities to compete generally with larger carriers. Moreover, although closed bidding is not now applicable for the AWS Auction, the Commission should clarify that this is a viable option for future auctions – especially if other DE provisions do not provide adequate protection to permit designated entities to have meaningful success in the auction.

Lastly, with respect to the Council Tree urging that the Commission expand its unjust enrichment rules to guard against future impermissible relationships, Poplar submits that protection already exists on this issue and that no increased regulation is needed or appropriate.

### **III. CONCLUSION**

Much of the considerable success associated with the Commission's DE program has been due, at least in part, to closed bidding. While bid credits certainly have helped every Broadband PCS market to date, it is closed bidding that has been most helpful to DEs. The Commission should continue to use such bidding in future markets.

Respectfully Submitted,

POPLAR ASSOCIATES, LLC

A handwritten signature in black ink, appearing to read 'Thomas Gutierrez', is written over a horizontal line.

By: Thomas Gutierrez, Esquire  
Lukas, Nace, Gutierrez & Sachs Chartered  
It's Attorney

February 24, 2006